

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: March 7, 1997

TO : Willie L. Clark, Jr., Regional Director
Region 11

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: IATSE and its International Photographers' Guild Local 600
(King Telpro, Inc.), 11-CB-2704
IATSE and its International Photographers' Guild Local 600
(Gideon Productions, Inc.), 11-CB-2705
IATSE (Night Flier, Inc.), 11-CB-2706
King Telpro, Inc, 11-CA-17155
Gideon Productions, Inc., 11-CA-17156

512-5084-5050
518-4040-5000
530-2050-0100
530-2050-1200
530-2050-2500
530-2075-0167

These cases were submitted for advice as to whether the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (IATSE or the International)¹ represented a majority of the employees employed by three different employers at the time that IATSE and these employers executed their respective collective-bargaining agreements, or whether the agreements constituted recognition of a minority union in violation of Sections 8(a)(2) and 8(b)(1)(A) of the Act.²

¹ In two of the charges, IATSE affiliate International Photographers' Guild Local 600 (Local 600) is also a charged party.

² These cases were also submitted for advice on whether Section 10(j) relief is warranted if violations are found. That issue will be addressed in a separate memorandum.

FACTS

Background

In late July 1996, IATSE representatives³ demanded and obtained recognition for IATSE (IATSE and Local 600 in two of the cases) as the exclusive bargaining representative of certain employees employed at the time by three different production companies that were filming motion pictures in Wilmington, North Carolina. The three production companies (Employers), Night Flier, Inc. (Night Flier), King Telpro, Inc. (King Telpro), and Gideon Productions, Inc. (Gideon), separately signed similar collective-bargaining agreements. The agreements, in essence, required the employers to make certain contributions to IATSE benefit funds and covered only the productions then under way.

The three productions were projects of short duration that commenced in early July 1996 and concluded in early or mid-August 1996. In all three instances, most of the filming had been concluded by the time IATSE demanded and obtained recognition.

Shortly after the productions concluded, charges were filed on behalf of a group of employees against IATSE and the employers⁴ alleging that IATSE did not represent a majority of employees in any of the three productions when recognition was granted. IATSE contends that a majority of the employees in all three productions were members in good standing of IATSE at the time recognition was granted, and that by maintaining their membership these employees had designated IATSE as their representative.

Night Flier (Case 11-CB-2706)

1. Demand for recognition and negotiations

³ The representatives included Matt Loeb, agent of the International, as well as agents from various local unions affiliated with IATSE, such as Local 491 and Local 600.

⁴ Charges were filed against IATSE involving all three productions and companion charges were filed against King Telpro and Gideon. No charge was filed against Night Flier.

In July 1996, IATSE learned that several film productions had commenced in Wilmington, including that of a low-budget theatrical motion picture entitled "Night Flier." IATSE agent Loeb determined that, according to a Night Flier crew list he had obtained, a majority of the employees in the traditional IATSE craft positions were union members. Loeb first demanded recognition in or about mid-July 1996⁵ via telephone conversations with Night Flier executive producer David Kappas and attorney Jerry Kauff. At that point, Night Flier refused to grant recognition.

About July 30, Loeb visited the Night Flier set in Wilmington with a team that included other representatives of the International and representatives of various local unions affiliated with IATSE. They distributed leaflets to crew members announcing a union meeting that night. About 20 to 25 crew members attended the meeting. Loeb and the other union representatives informed employees that IATSE was trying to get a contract for the Night Flier production because a majority of the crew were "union members." They also told crew members that if IATSE was not able to obtain a contract that night a strike might be called the following day.

At the meeting, several employees voiced disagreement with IATSE's actions. John Ferguson, Night Flier gaffer and member of IATSE Local 873 (out of Toronto, Canada), asked the union representatives why IATSE had not informed the members that it was seeking recognition and why it had not given members a chance to agree or disagree with IATSE's negotiating on their behalf. According to Ferguson, he and others expressed disagreement with IATSE representatives showing up "from out of town" and "strong-arming" the union members. Several members complained that representation was the role of the locals, not of the International representatives.⁶ Ferguson then had an argument with some of the union representatives regarding the possibility of a strike the following day, IATSE's

⁵ All dates are in 1996 unless otherwise indicated.

⁶ There is no specific evidence of how many union members expressed dissent at the meeting, who they were, or exactly what they said.

tactics, and the proper role of the locals. After this argument, Ferguson left the meeting.⁷

That night, after the meeting concluded, Loeb spoke with Kappas and Kauff. He told them that there would be a strike the following day if no agreement was reached. Night Flier agreed that night on the terms of an agreement covering some of the production employees. Night Flier also agreed to engage in negotiations with several specified IATSE locals for agreements to cover employees in certain production departments.⁸

As the employees arrived on the set the following day, they were informed by the union representatives that Night Flier had agreed to a contract and there was no need for a strike. Production continued as normal.

A day or two after learning of the contract several Night Flier employees attended a meeting coordinated by employees of another Wilmington film production that IATSE had attempted to organize. The purpose of the meeting was to discuss IATSE's recent tactics and ways to oppose them. Kelly Tenney, Production Coordinator, was one of the Night Flier employees in attendance. After attending the meeting, she decided to prepare and circulate a petition among Night Flier employees stating that they had not authorized IATSE to negotiate on their behalf and that they rejected the contract. About 23 Night Flier employees (union members and non-members) signed the petition. The petition is not dated, but Tenney stated that she prepared and circulated it about August 4, 1996. The signed petition was then provided to the attorneys hired by the employees to file charges on their behalf. There is no evidence that the petition was presented to IATSE.

2. The contract

⁷ According to Loeb, although some members expressed disagreement with IATSE's tactics, there was no dissent when the possibility of a strike was discussed.

⁸ There were some negotiations between Night Flier and these locals (Local 600, Local 161, and Local 798), but no agreements were reached.

The agreement signed by Night Flier contains a recognition clause identifying "IATSE" as the "sole and exclusive bargaining representative" for employees employed as of July 19, 1996, in the production of the film "Night Flier" in the Art, Props, Grip, Electric, Sound, Wardrobe, Medical and Mechanical Special Effects departments. The agreement also requires Night Flier to make contributions to the IATSE Annuity Fund and to pay painters and construction personnel specified amounts as "box rentals." The agreement was effective from July 19, 1996, to the completion of photography on the film and any "wrap activities" in Wilmington.⁹

As of early September 1996, Night Flier had not made the contributions to the Annuity Fund. There is no evidence regarding the payment of the "box rentals."

King Telpro (Cases 11-CB-2704 and 11-CA-17155)

1. Demand for recognition and negotiations

On July 31, after informing the Night Flier crew of the successful negotiations, the union representatives went to the set of the King Telpro production. At the time, King Telpro was filming a made-for-television motion picture entitled "Santa and Me." The union representatives spoke with Mel Bishop, senior vice-president of Hearst Entertainment Productions (King Telpro's parent company). They told Bishop that they had polled employees on the set, that IATSE had a "quorum," and that they wanted a contract for fringe benefits contributions. King Telpro and IATSE representatives discussed the contributions and what would be the total cost to the employer.

At the same time, union representatives had been talking to crew members, informing them that IATSE was trying to get a contract. During the lunch break, union representatives distributed leaflets informing employees that there would be a work stoppage until IATSE could secure a contract. Key grip Rob Hoelen told several employees that he was a union member and if required, he

⁹ The agreement also provided that terms and conditions of employment would not be diminished, and contained grievance/arbitration and no strike/no lock-out clauses.

would stop working. Several employees commented that the director of photography was also a union member. Employees voiced concerns that if these key personnel did not return to the set after lunch, production could not resume without them.

Some employees began to return to the set shortly before the lunch break ended. Other employees gradually approached the set after lunch. Unsure of what was happening, employees stayed near or around the set, waiting for instructions.

As the end of the lunch break approached, the union representatives informed King Telpro that employees would not return to work until a contract was signed. Union representatives proceeded to prepare a brief handwritten contract, which was signed by King Telpro. An unknown party then announced by speaker that production would resume. The announcement was made approximately 15 minutes after the lunch break was scheduled to end. Production resumed immediately. Shortly thereafter, King Telpro representatives informed the employees that a contract had been signed with IATSE.

Sometime around mid-August, after production had concluded, production accountant Jyllel Dickerman learned that employees at other Wilmington productions had signed petitions denouncing IATSE's actions. She prepared a similar petition and mailed it out to the "Santa and Me" production crew. There is no information regarding how many employees signed the petition or what was done, if anything, with the signed petitions.

2. The contract

The agreement states that the "Hollywood Basic Agreement" will apply to crew members hired and transported from Los Angeles, California. It outlines amounts to be paid by the employer to an unspecified benefit fund on behalf of the other employees. It also states that terms and conditions in effect will not be diminished, that a grievance and arbitration clause will be drafted by the parties,¹⁰ and that the contract applies to the "Santa and

¹⁰ The grievance and arbitration clause was never drafted.

Me" filming only. There is a recognition clause naming "IATSE and Camera Guild 600" as the exclusive bargaining agents for "the traditional IA crafts."

As of August 24, 1996 no contributions had been made to any benefit fund.

Gideon (Cases 11-CB-2705 and 11-CA-17156)

1. Demand for recognition and negotiations

The afternoon of July 31, after leaving the "Santa and Me" set, the union representatives went to the set of "Member of the Wedding," a made-for-television motion picture being produced by Gideon. They first met with production manager Chris Bromley and, later in the evening, with Bromley and Gideon president David Rintels. The union representatives told Gideon representatives that IATSE wanted a contract, covering "Member of the Wedding," to collect pension and welfare benefits. Gideon eventually agreed to sign a handwritten contract similar to the King Telpro contract after the union representatives threatened a strike.

That afternoon, union representatives also spoke with some Gideon employees. Some employees learned that IATSE was trying to get a contract and that a strike might be called if Gideon failed to negotiate.

Either at the end of filming that same day, or the following day, employees were called to a meeting where Gideon and union representatives were present. Employees were informed that Gideon had signed a contract with IATSE. Some employees expressed dissatisfaction with IATSE's actions. There were complaints about IATSE showing up at the end of production, instead of before production began. Others pointed out that IATSE had not consulted with employees before negotiating on their behalf and that the employees had not asked IATSE to represent them.

Immediately after learning of the contract, script continuity supervisor William Thomas Rainey (member of IATSE Local 161) prepared a petition stating that the employees had not been consulted by IATSE, that they had not authorized IATSE to represent them, and that they rejected the contract. Between about August 1 and August 3, Rainey obtained signatures from approximately 50 "Member

of the Wedding" crew members. Rainey spoke with Scott Harbinson, representative of IATSE Local 491 (Wilmington local) and informed him of the petition. Harbinson told him IATSE would not rescind the contract. Rainey then contacted a Local 161 agent who said he would relay the information to the International. Rainey waited a few days for some response from IATSE, but after receiving none, decided, with other employees, to pursue NLRB charges.

2. The contract

The Gideon contract is modeled after the King Telpro contract. It establishes that the "Hollywood Basic Agreement" applies to employees hired and transported from L.A. It sets the contributions to be made on behalf of other employees to an unspecified benefit fund. It also provides that terms and conditions of employment would not be diminished and that a grievance and arbitration clause would be drafted.¹¹ The contract applied only to the "Member of the Wedding" production and recognized "Local 600 as the exclusive representative for the camera department, and the IATSE for all other traditional IA crafts."

As of late August 1996, no contributions had been made to any benefit fund.

ACTION

We conclude that although a substantial number of the employees in each production are members of various IATSE locals, the unions did not enjoy majority support in any of the three productions when recognition was granted by the employers and accepted by the unions. Therefore, Section 8(a)(2) and 8(b)(1)(A) complaints should issue against the Employers and IATSE and Local 600, absent settlement.

Board case law has established that union membership can be considered evidence of an employee's designation of a union as a bargaining agent: "Although an absence of union membership does not mean that employees do not want the union to represent them, it is permissible to infer from the affirmative action of union membership that union

¹¹ No such clause was drafted.

members do desire union representation." ¹² Thus, union members have been "counted" as union supporters in computing a union's majority status.¹³ However, since it is the affirmative action of maintaining membership that enables the Board to presume that a member's original designation of the union continues to be effective, the Board has not included in majority calculations memberships that have lapsed or are not on active status.¹⁴

Membership can be considered proof of majority support even in cases where union membership dates back to a previous employer. In those situations, the Board has held that continued union membership creates a presumption of support and designation of the union, which can, however,

¹² Market Place, 304 NLRB 995, 1000 fn.6 (1991) (Board adopted ALJ's finding that at the time of a change in ownership of the employer, the union had majority status because 3 out of 4 employees were union members).

¹³ See, e.g., (in addition to Market Place, *supra*) Harris-Woodson Co., Inc., 77 NLRB 819, 834 fn.15 (1948); Brunswick Meat Packers, 164 NLRB 887 fn.1 (1967); Glendora Plumbing, 165 NLRB 101 (1967); Breezway Foods, Inc., 183 NLRB 941 (1970); Haberman Construction Company, 236 NLRB 79 (1978); Bill's Cabinet Shop, 251 NLRB 1586, 1588 (1980).

¹⁴ See, e.g., Grand Union Co., 122 NLRB 589, 601 (1958) (employee who allowed his union membership to lapse not counted as a union supporter); Barney Wilkerson Construction Co., 145 NLRB 704, 706 (1963); Shenandoah Golf and Country Club, 185 NLRB 455, 458 (1970) (no evidence that memberships were current because evidence of dues payment and union insurance coverage was more than a year old). When determining majority support the Board views prior union membership differently from prior authorization cards signed in other organizing campaigns. It is irrelevant how long ago the membership was acquired as long as the membership is active at the time that the union asserts majority status. Thus, rules regarding the staleness of authorization cards, such as set down in Grand Union Co., *supra*, are not applicable when dealing with membership.

be overcome by a showing that the member no longer desires representation by the union with his or her new employer.¹⁵

Therefore, when the union member engages in conduct that shows that he or she does not wish to extend the prior designation of the union to a new employment situation, the Board has not counted that membership in determining the extent of union support.¹⁶ On the other hand, when the union member does not engage in any such conduct, the Board infers continued designation of the union from the fact of continued membership.¹⁷

¹⁵ Emco Steel, Inc., 227 NLRB 989, 993-994 (1977)

¹⁶ See, e.g., Emco Steel, *supra* (Board did not count an employee who had been a longtime member of the union because, when approached by the union at his new employer, the member, although he decided to maintain his membership, refused to sign an authorization card); WCAR, Inc., 203 NLRB 1235, 1248 (1973) (ALJ did not count three longtime union members who decided to maintain dues-paying membership at their new employer because, during the union's organizing campaign at this employer, one refused to sign an authorization card, the second had delivered an "impassioned" antiunion speech, and the third was described as an "outspoken opponent" of the union).

¹⁷ Emco Steel, *supra* at fn.13; Williams Litho Service, Inc., 260 NLRB 773 (1982) (The calculation of majority support was for the purposes of determining that a bargaining order was appropriate. The ALJ's findings as to majority, however, became moot when the Board denied the bargaining order on the grounds that the nature of the violations committed by the employer did not warrant imposition of such a remedy); Haberman Construction Co., 236 NLRB 79, 79 fn.1 (1978) (The Board does not discuss whether the memberships dated back to a previous employer. However, that can be inferred from the fact that while employees were hired by the employer for short terms, on a project-by-project basis, they had been union members from 2 to 10 years). See also, Restore Container, Case 32-CA-1138, Advice Memorandum dated March 15, 1979; Tanner Construction, Case 28-CA-9387, Advice Memorandum dated January 6, 1989.

In sum, the Board recognizes that union membership creates a presumption of designation of a union even at a new employer. However, to constitute an effective designation the membership must be active. Furthermore, certain conduct or expressions by the member can rebut the presumption of designation, despite the continuance of active membership.

Applying the above precedent to the instant cases, we conclude, based on the membership records submitted, that neither IATSE nor Local 600 enjoyed majority support in the units employed by any of the three Employers. Therefore, the employers and IATSE and Local 600 violated Section 8(a)(2) and 8(b)(1)(A), respectively, when they executed their individual collective-bargaining agreements.¹⁸

Night Flier

IATSE submitted membership applications (with transfer cards, in some instances) signed by Night Flier employees, along with union records showing which of those members were on active status. IATSE's records show a total of 34 active members employed by Night Flier in a unit of 61 employees.¹⁹ Examination of the records shows that the employees are members of about ten different IATSE locals.²⁰

¹⁸ We base our conclusion on the facts of each case, without reaching the question whether the membership records submitted by IATSE, which designate a number of different IATSE affiliated locals, may be considered proper designations of the the International and Local 600 (which were the parties that demanded and obtained recognition), as IATSE contends.

¹⁹ That is IATSE's version of the number of employees in the unit. According to the employer, based on who was employed as of the date of recognition (7/31/96), the number of employees in the unit is 35, out of which 21 are members.

²⁰ The local with the largest number of members was Local 491 (Wilmington, N.C.), with approximately 21 members in a unit of 61 (or 8 members in a unit of 35, according to Night Flier's numbers).

Even if we were to consider membership in various different locals as valid designations of the International, in this case there is evidence that not all of the memberships continued to be valid designations. There is evidence that at the members' meeting called by IATSE before it obtained recognition, several employee-members expressed disagreement with IATSE's negotiating on their behalf. This conduct shows that not all of the members wished to extend their designation to their employment with Night Flier and rebuts the presumption of designation established by their memberships.²¹ Considering that even counting all memberships IATSE had a very close majority, we conclude that the members' conduct at this meeting destroys IATSE's majority.

In addition, it should be noted that a large number of employees (23), members and non-members, signed a petition rejecting the contract and IATSE's authority to negotiate on their behalf. The petition, although signed after recognition, shows that if all employees had been given a chance to express their free choice before the contract was executed, a significant number of employees would not have authorized IATSE to represent them with respect to Night Flier.

King Telpro

IATSE submitted records showing 20 members employed by King Telpro in a unit that IATSE claims consists of 36 employees.²² Again, the records submitted by IATSE show that the employees were members of various IATSE locals.²³ In addition, although IATSE Local 600 was also recognized, as per the contract's terms, as a bargaining representative, none of the employees was a member of that local.

²¹ See cases cited in fn.16 above.

²² IATSE submitted 22 applications, but 2 of them were signed after 7/31/96, the date of recognition. We are thus not counting those 2 applications.

²³ As in Night Flier, the local union with the most members was Local 491 with 10 members in a unit of 36 (according to IATSE's definition of the unit).

Even if we were to consider the membership records from the different locals submitted by IATSE as proof of designation of that union, IATSE did not enjoy a majority in the King Telpro unit. The calculation of majority support is complicated by the difficulty of determining the number of employees in the unit. First of all, the unit was not clearly described in the contract. Also, King Telpro did not provide a list of the employees who were employed on the date of recognition, submitting instead a list of all crew members employed since the beginning of production (76 employees). In addition, IATSE and King Telpro disagree as to the size of the unit. IATSE is including 2 editors that King Telpro would exclude because they were not involved in production in Wilmington, but were employed only to perform post-production editing in California. King Telpro would, in addition, include 6 other employees which IATSE excluded.²⁴ IATSE provided no basis for its exclusion of these employees. It is apparent from the job titles and departments in which these employees worked, that they performed work that was closely related to that of other employees included in the unit. Thus, we conclude that the appropriate unit should include these 6 employees.²⁵

The Region was able to confirm that one of the members that IATSE included in the unit (Richard Sherman) was no

²⁴ IATSE excluded the assistant production coordinator while including the production coordinator. It also excluded the sound production assistant while including the other sound department employees. King Telpro would include those 2 assistant positions. King Telpro would also include the location manager, the assistant location manager, and 2 art department interns. IATSE did not submit proof of membership for any of the employees employed in these positions.

²⁵ Adding these 6 employees brings the number of employees in the unit to 42. If we exclude the 2 editors, as King Telpro contends, the unit would consist of 40 employees. Both of the editors are members of an IATSE local. Their inclusion or exclusion does not affect the determination of majority, thus, we are not making any determination as to their placement in the unit.

longer employed by King Telpro on the date of recognition.²⁶ Therefore, the number of employees in the unit as well as the number of members would be reduced by one (a unit of 41 employees if we include the editors; of 39 if we exclude them).

The Region also determined that one of the applications was signed on 7/31/96, the date of recognition. The signer, Mark Graves, stated that he signed a Local 491 membership application in anticipation of employment at another film production. He had been told by another employee that he would be unable to work in that production unless he joined an IATSE local. Graves stated that not only was he unaware that IATSE intended to demand recognition from King Telpro, but that he signed the application under the understanding that IATSE would not demand recognition at King Telpro. Before signing the application, he told Local 491 agent Randy Pickett that he did not agree with IATSE tactics that he had observed in the past, which included showing up in the late stages of a production and forcing a strike when employees had not requested IATSE to represent them. According to Graves, he signed the application because Pickett assured him that IATSE would no longer be using those tactics. Therefore, Graves was unaware that IATSE would be relying on his application to demand recognition from King Telpro. We conclude, based on the circumstances of the application, that Graves did not intend his designation of the union to apply to his employment with King Telpro and that his comments to Pickett showed that he was not authorizing the union to represent him with respect to that employer. Therefore, we would not include Graves in the majority count.

After excluding Sherman from the unit and discounting Graves's membership application, there are 18 members in a

²⁶ Sherman stated that he left the King Telpro production early because he accepted other employment in California. Although he does not remember exactly what was his last day of work with King Telpro, he is certain that he left before any IATSE representatives appeared and before there was any talk of union contracts or strikes on the set. Sherman estimates that his last day of work for King Telpro was 7/29/96 and that on 7/30/96 he was en route to California.

unit of 41 employees (or 16 members in a unit of 39, if we exclude the editors as King Telpro contends is proper), clearly, not enough to constitute majority.²⁷

IATSE argues, in the alternative, that majority support for IATSE can be inferred by the fact that employees engaged in a strike called by the union. The Region concluded, and we agree, that in the circumstances of this case, the so-called "strike" cannot be considered proof of majority support.

Under Board law, a union can establish majority status by a variety of means, including a union-called strike or a strike vote.²⁸ The circumstances in which the strike or work stoppage take place must be examined, however, because not every strike or work stoppage will prove majority support for the union.²⁹

In this case, the evidence does not establish that the employees engaged in a coordinated strike, much less that the "strike" was the result of majority support for IATSE and Local 600. First, there is no evidence of a strike vote or any similar expression of majority support for IATSE's strike directive. Second, there is no clear evidence that a strike actually took place. Rather, the evidence shows that some employees returned to the set after the lunch break, as scheduled. Also, production was delayed for no more than approximately 15 to 20 minutes.

²⁷ In addition, two of the "members" included in these numbers were actually applicants for membership whose applications had been signed in May 1996 and were still pending on 7/31/96.

²⁸ NLRB v. Gissel Packing Co., Inc., 395 U.S. 575 (1969), 71 LRRM 2481, 2489. See, also, Ashe Brick Co., 280 NLRB 1383, 1389 (1986).

²⁹ See, e.g., Norlee Togs, Inc., 129 NLRB 14, 19 (1960) ("...the fact that a majority of employees do not report to work during a strike does not of itself establish majority status. The failure or refusal of employees to cross a picket line or work during a strike does not necessarily indicate that they subscribe to or approve of the objectives of the strike.")

From the evidence, it appears that the delay was caused by the absence of a few key employees (without whom production could not resume) who were union members and were following IATSE's directive. Also the evidence suggests that there was more confusion among employees as to the status of the production than a clear intent to withhold their labor.³⁰ Thus, considering that there was no opportunity for the employees to express whether they agreed with the proposed strike, and the confused circumstances under which the delay in production took place, we conclude that such a delay in resuming production after a lunch break does not constitute a strike showing majority support for the union.

Therefore, we conclude that neither the membership records nor the "strike" show that IATSE and Local 600 were designated as bargaining representative by a majority of King Telpro's employees.

Gideon

IATSE submitted membership records showing that 41 Gideon employees were active members of different locals prior to or on the date of recognition.³¹ IATSE claims that the Gideon unit consists of 82 employees.³² Thus, even according to IATSE's definition of the unit, there are not enough membership records to establish a majority (42 members required out of 82 employees).

³⁰ According to the evidence, the employees lingered on or around the set, or remained in the lunch room, waiting for instructions. There were no picket lines, signs, or any expression by the employees that they were engaging in a strike.

³¹ IATSE submitted membership records for 42 employees, but one of the membership applications was signed after the date of recognition and should not be counted.

³² The employer contends that the unit consists of 54 employees, out of which only 21 are members. The Region was unable to determine the precise unit, but it established that IATSE had excluded at least one employee who was clearly in the unit according to the contract's terms. Therefore, under IATSE's definition of the unit, there would be 83, not 82 employees.

In addition, it should be noted that a significant number of Gideon employees expressed their disapproval of the negotiations and contract shortly after they learned of the execution of the contract.³³ This further bolsters the evidence that IATSE and Local 600 did not enjoy majority support in this unit.

In conclusion, in this case, as in the Night Flier and King Telpro cases, the evidence shows that the unions did not enjoy majority status at the time that they were recognized as exclusive bargaining representatives. Therefore, Section 8(a)(2) and 8(b)(1)(A) complaints should issue against the Employers and IATSE and Local 600, absent settlement, for their respective violations of the Act.

B.J.K.

³³ Several employees expressed dissent at the meeting, held by union and Gideon representatives, in which they were informed that the contract had been executed. About 50 employees signed an anti-IATSE petition shortly after that meeting. Some of the employees had not even known that IATSE was demanding recognition until they were informed of the contract at this meeting.